

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE AND CLAIMS SUBCOMMITTEE ON DISTRICT COURT FUNDING

Call to Order: By **SEN. JOHN ESP**, on March 28, 2003 at 7:40 P.M.,
in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. John Esp, Chairman (R)
Sen. Edward Butcher (R)
Sen. Dan McGee, Vice-Chairman (R)
Sen. Linda Nelson (D)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Joseph (Joe) Tropila (D)
Sen. Mike Wheat (D)

Members Excused:

Members Absent: None.

Staff Present: Prudence Gildroy, Committee Secretary
Valencia Lane, Legislative Services

Please Note:

Audio-only Committees: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 134, 1/10/2003

Discussion:

Valencia Lane, Legislative Services, discussed and passed out proposed amendments in the gray bill (LHB GB) for **SB 134**.

EXHIBIT (fcs66b01)

CHAIRMAN JOHN ESP said on page 6, line 26, the issue that Chief Justice Gray brings up is in this portion of the bill. Up until this July that has been a county expense and in **SB 176** it was scheduled to become a state expense.

Harold Blattie, Montana Association of Counties, said prior to **SB 176**, civil jury trial costs were county costs, however they were brought in under state assumption and this is the second year that there has been civil jury reimbursement. If those expenses were paid out of the district court budget in 1998 or 1999 and the county had those expenses they were eligible for reimbursement and if they didn't have those costs then those counties are not eligible for reimbursement and there needs to be some equity among all fifty-six counties.

SEN. JEFF MANGAN advised they need to address some significant concerns in **SB 134**.

SEN. DAN MCGEE, SD 11, Laurel, said the language on the bottom of page 6 is to try to conform to the language in **HB 489**, which amended out the 1998-1999 thing and that is what this language is intended to do.

SEN. MANGAN advised he would like to go through the gray bill prepared by **Mr. Blattie**.

SEN. MCGEE asked if most of the concerns were that it is not a direct state payment, but that the county pays and the state reimburses.

Mr. Blattie said that is correct along with the concern about cost shifts to the counties. He advised the gray bill is the result of six peoples efforts: himself, **Mary Phippen, Association of Clerks of District Court; Linda Stoll, Missoula County; Ann Mary Duseau, Missoula County; and Nancy Sweeney, Clerk of Court**. It deals with what costs would be difficult to manage with the state directly paying the vendor; that is limited to some juror and witness fees. Other costs from providers have no urgency in the timing. It doesn't make good business sense to have these expenditures go through the county book keeping system when the state could pay them directly. When a claim comes from a vendor, the judge signs it and sends it to Helena, rather than going through a county claims process, the county sending the claim to Helena and waiting. He discussed page 2, line 30, and said this could be handled through the state process. On page 3, lines 10-11, and lines 24-25, this area doesn't need to be paid by the county; it could go directly through the state. Lines 26-28 fall into the category of new costs and in criminal cases they have always gone through the reimbursement process and have been paid by the state.

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CHAIRMAN ESP said the rational for that change was it was a prosecutorial function not a court function and that was the reason why it was separated out.

Mr. Blattie advised that is a policy change as duly noted. At the top of page 4, it could be directly paid for by the state.

Ms. Lane asked if they would like to leave these sections entirely out of the bill and they would remain as they are.

Mr. Blattie said he was not sure he was prepared to make that leap. The committee's discussions previously had been on minimizing the reimbursement through the counties process and maximizing those costs that are state costs and are simply being paid directly by the state.

SEN. MCGEE said he would like to get the counties out of the picture and as much as possible the costs be ultimately born by the state. He thought it appropriate for the county to acknowledge bills because otherwise there could be bills coming directly to the state with no oversight and they wouldn't know if the claims were legitimate.

Mr. Blattie said it would be the responsibility of the judge or the Clerk of District Court to approve those claims.

SEN. MCGEE asked if the Clerk of District Court was going to be assumed.

Mr. Blattie said no.

SEN. MCGEE asked wouldn't it be an appropriate mechanism to have these claims go through the Clerk of District Court to make sure they are legitimate before it goes to the state.

Mr. Blattie said he didn't think it would really enhance the process, etc. if it went through the Clerk. The Judge is the one who validates the claim.

CHAIRMAN ESP said he would like to continue with other issues of concern in the bill.

Mr. Blattie referred to page 6, lines 6-9. Current law makes no distinction in who makes the request spelled out on page 4 of the gray bill. In all criminal cases whether it is requested by the defendant or prosecution it is paid by the district court fund. This is a policy change and a place where costs are being transferred to the counties.

CHAIRMAN ESP said this is a prosecutorial versus a defense distinction they are attempting to make.

Mr. Blattie said on line 26, page 6, he suggested a period after the word "trials." The bill would also need some coordination language with **HB 489**. The money for the civil jury trial costs, which is approximately \$140,000, was identified as reported on the county reporting forms as civil jury trial costs. Those dollars have been taken out of the county's entitlement share and have been part of the base budget for the courts. He suggested the money and the responsibility needs to be joined. If those criminal costs are currently being reimbursed if they are being requested by the prosecution, he didn't know if those monies could be identified because they are done at the order of the judge. On page 8, line 22, they didn't know why title 46 needed to be referenced. On page 10, line 5 and 6, he suggested this language be in 4(E) of 3-5-901. He read page 6, line 33, and said (A) is also on page 10, line 9. However (b), (c) and (d) are not included as state costs and this would be a shift of cost to the counties.

{Tape: 1; Side: A; Counter: 24.1}

SEN. MCGEE asked wouldn't they still be reimbursed for all of these things.

Mr. Blattie said not b, c, d because on line 5 it must be paid by the county and reimbursed by the state in 3-5-901 and it says that it will pay for 40-4-215(2) (A) but it doesn't include the others. He said it is crucial that (A) comes off of there so they are all paid.

SEN. MCGEE asked if they wanted to strike (A) on line 5, page 10.

Mr. Blattie said that was correct.

SEN. TROPILA asked if they wanted 4(e) added to 3-5-901.

Mr. Blattie said it doesn't need to be added; he just wrote it there for reference purposes. Striking (A) causes no policy shift from current law. On page 11, he has highlighted areas of concern mostly being with the payment by counties and the reimbursement by the state. He said it appears that there is no consistency among the counties; he said some counties get a claim from their provider and send it to the state and they are being paid directly. He said in other counties these costs are being paid by the county and then they are reimbursed. Some of these costs are not being handled uniformly in all of the counties.

CHAIRMAN ESP asked if they were discussing year 2003.

Mr. Blattie said yes.

CHAIRMAN ESP asked about the coordination notations.

Mr. Blattie said it is just notation marks as they work through the bill where they feel there needs to be coordination language with SB 218. On page 14, line 13-14, this is a new county cost. They do not find anywhere in 3-5-901 where this is reimbursed and this is a shift of considerable cost. The money was deducted from the entitlement share and the money is at the state level now.

{Tape: 1; Side: B}

CHAIRMAN ESP asked if this cost was a reimbursable expense prior to this time.

Mr. Blattie said no, it was directly paid.

Linda Stoll, Missoula County, said those costs are paid directly by the **Department of Public Health** or the **Department of Corrections**. They are not paid for by either the **State Supreme Court** or the counties.

Mr. Blattie said **Chief Justice Gray** on several occasions made a distinction between judicial costs and executive branch costs. This is not a judicial branch cost but rather an executive branch cost. He said they do not disagree with that, but it is not a county executive branch cost. These are costs that are being directly paid for either by the **Corrections** or **DPHHS**.

CHAIRMAN ESP asked if in this section they are amending current law.

Mr. Blattie said that was correct.

CHAIRMAN ESP asked if these bills are paid by **DPHHS**.

Ms. Stoll suggested there has not been a visible bill that has been submitted to either a county or the **Supreme Court**. People get sentenced and are absorbed by the system. They know counties and the **Supreme Court** have not been paying these expenses and have not been billed.

Mr. Blattie said on page 14, line 29-30, the costs should not be limited to indigent defense but to any criminal trial. The amendment would make the cost for witness fees and expenses for someone who has their own counsel a county cost and if counsel is

court appointed as indigent counsel, it is reimbursed by the state. There is a policy decision that is a significant change from current law. Section 57 needs to be more thoroughly discussed and coordinated with **SB 218**, it needs to go to the house and then to a conference committee. The termination language that is being struck on page 16, lines 4-6, was the mechanism that capped the state's exposure in **SB 176**. He read (3) of 3-5-901. Those costs would become state costs after June 30, 2003. Nowhere in this bill are the district court expenses related to involuntary commitment and youth court proceedings either a state cost or reimbursed by the state. He said there have been hundreds of thousands of dollars deducted from the counties' entitlement share that makes the base for this. The state has the money for these services and in this form, it will be a huge cost shift back to the counties.

SEN. MANGAN advised that is one of the issues in **HB 18**.

{Tape: 1; Side: B; Counter: 11.0}

Mr. Blattie said he intends to pull the file on **SB 176** and see where that bracketed language was moved to or deleted, etc.

Ms. Lane said she thought that was what was intended.

Mr. Blattie said that may be the case but they will bring forth the argument that this money has been recorded as from the counties as a district court expense. Therefore this money was taken from the entitlement share and became a part of the base budget for the court appropriations and the state has the money.

CHAIRMAN ESP asked what are those services.

Ms. Phippen advised in juvenile proceedings those services would be jury and witness fees. There would also be the psychological evaluations and involuntary commitment proceedings.

Ms. Lane felt they were in (1), (d) and (e) of existing code.

SEN. MCGEE advised they are on page 4, starting on line 26 of the gray bill.

Ms. Lane said they are now on page 7.

Ms. Phippen advised it would be anything other than indigent defense of the youth in youth court proceedings.

SEN. MCGEE wondered if page 6, line 19 was the same thing.

Ms. Phippen said it is there, but she wondered about the proceedings for involuntary commitment. Ultimately they want to make sure that those expenses included in those involuntary proceedings and youth proceedings are not eliminated.

CHAIRMAN ESP said they have been working on getting as many costs as they can paid directly and they have been working on this language.

SEN. MCGEE recommended they meet again, go through this bill page by page and get it ready to send to **Finance and Claims**.

CHAIRMAN ESP said unless they suspend the rules something has to be reported out of **Senate Finance** by Monday.

SEN. MCGEE said even if they send the bill to **Finance and Claims**, there would be a nightmare with this bill. He suggested that they still work on it Monday. The major decision is between the counties and the **Supreme Court** and the language of "paid for by the county and reimbursed by the state." He said what they are hearing from the counties is that they don't want to be involved.

{Tape: 1; Side: B; Counter: 21.6}

SEN. MANGAN advised he asked the counties to do this.

Ms. Lane said she did not draft **SB 134** and she is not that familiar with it. It looks like the bill was originally drafted to provide that a lot of the costs that the state was paying would be put back on the counties. Then the bill was drafted with the Gray, gray bill and the approach was that the counties would pay and the state would reimburse. Now the counties are saying that they really don't like that approach either. She felt the counties would like the bill to go away because they like way is in existing code already. She said she would rather do a substitute bill versus eight pages of amendments but she needs to know what the committee wants.

SEN. MCGEE said that is a valid point and maybe they should kill **SB 134**.

SEN. MANGAN advised they needed **SB 134** for the coordination language.

SEN. MCGEE said he was going to propose an amendment that would require the **Supreme Court** to contract with the **Department of Administration** to do the reimbursements to the counties so that they are done in a timely matter.

Mr. Blattie said there is a state policy already in place that the bills be paid in 30 days and the **District Court Council** has adopted that policy. He said what they are hearing tonight is the counties' frustration with the current situation. If there was a high level of confidence that reimbursements would be done in a timely manner and at 100 percent then there would not be so much concern.

SEN. MCGEE said he would like to go through the gray bill and find out what the counties would like the state to pay directly and then debate about whether it should be a direct state pay or a reimbursement.

Ann Mary Dussault, Chief Administrative Officer of Missoula County, advised if the person who incurs the cost is a county department there should be no issue with the county paying the cost and getting reimbursed. If the individual incurring the cost is a state employee such as a judge, she feels that the county should not have to pay and then get reimbursed; it should be a state expense.

SEN. MCGEE hoped the issue can be worked on further in the interim.

ADJOURNMENT

Adjournment: 8:40 P.M.

SEN. JOHN ESP, Chairman

PRUDENCE GILDROY, Secretary

JE/PG

EXHIBIT (fcs66bad)